

**PROPERTY TAX APPEAL BOARD'S DECISION**

APPELLANT: Basswood 2001, LLC  
DOCKET NO.: 05-00402.001-C-3 through 05-00402.004-C-3  
PARCEL NO.: SEE BELOW

The parties of record before the Property Tax Appeal Board are Basswood 2001, LLC, the appellant, by attorney Terrence J. Griffin of Eugene L. Griffin & Associates, Ltd., Chicago, Illinois; the Will County Board of Review; and the intervenor, Homer Community Consolidated School District 33-C, by attorney Joshua S. Whitt of Whitt Law, LLC, Aurora, Illinois.

The subject property consists of four vacant parcels totaling 587,566 square feet of land area or approximately 13.489 acres located in Homer Township, Will County, Illinois. The subject property is improved with a road that contains approximately 25,133 square feet to provide access to the subject and some adjoining parcels.

The appellant appeared before the Property Tax Appeal Board by legal counsel claiming overvaluation as the basis of the appeal. In support of this claim, the appellant submitted an appraisal prepared by Jason D. Zaley, who was called as the appellant's expert valuation witness. Zaley is a state licensed appraiser and holds the Member of the Appraisal Institute designation. Zaley was accepted as an expert valuation witness to provide opinion testimony before the Board without objection.

Using the sales comparison approach to value, Zaley estimated a fair market value for the subject property of \$3,655,000 as of January 1, 2005. The appraisal was marked as Appellant's Exhibit 1.

(Continued on Next Page)

Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds a reduction in the assessment of the property as established by the Will County Board of Review is warranted. The correct assessed valuation of the property is:

<u>DOCKET NO.</u>	<u>PARCEL NO.</u>	<u>LAND</u>	<u>IMPRV.</u>	<u>TOTAL</u>
05-00402.001-C-3	16-05-01-301-013-0000	\$459,961	\$ 0	\$459,961
05-00402.002-C-3	16-05-01-301-014-0000	\$294,403	\$ 0	\$294,403
05-00402.003-C-3	16-05-01-301-015-0000	\$293,559	\$ 0	\$293,559
05-00402.004-C-3	16-05-01-301-016-0000	\$358,685	\$ 0	\$358,685

Subject only to the State multiplier as applicable.

The appraiser first provided testimony in connection with the background and appraisal methodology used to value the subject property. Zaley testified he valued the subject in fee simple interest free and clear of all encumbrances. The appraiser concluded the subject's access easement road contained 25,133 square feet. Zaley deducted this area resulting in a net useable site of approximately 562,433 square feet of land area or approximately 12.912 acres. The net usable size was utilized throughout the appraisal report. The appraiser described the site as being pre-graded and ready for development with curbs and utilities along the perimeter with C-3 zoning. The appraiser testified the subject's highest and best use is for commercial development for a single user or subdivided into smaller parcels.

Referring to the plat of survey and aerial photograph of the subject contained within the appraisal, the appraiser noted the subject's access road provides ingress and egress to Home Depot and three out-lots that front Bell Road. He described the subject as an interior property with 746 feet of frontage along Glengary Drive. At the time of inspection in October 2005, the appraiser described the commercial nature and various uses for the properties that are adjacent to the subject including a Home Depot, Discount Tire Center, Chili's, Wendy's, Baskin Robbins/Dunkin Donuts and a banking facility.

The appraiser acknowledged the subject property was purchased for \$4,000,000 or \$7.11 per square foot of net usable land in August 2004, as part of an "up-leg" of an Internal Revenue Service 1031 exchange. The seller was Meijer Stores and the buyers were Basswood, LLC along with Sharp Family 2004, LLC and HT Crossing 2004, LLC. Meijer also owns another parcel to the south of Home Depot in the same development. The appraiser testified 1031 exchange transactions are used to avoid paying capital gains taxes on real estate transactions. The appraiser testified one requirement of the buyer in a 1031 exchange involves the purchase a like kind property within 180 days from the buyer's sale of another like kind investment property. Zaley determined the buyer had undue motivation and was under duress to negotiate the sale price and complete the transaction due to the very fast time mandate. The appraiser testified the buyer of the subject was given assurance by Meijer (the seller) that they were developing a store south of Home Depot in 2005 or 2006, which did not occur. The appraiser testified the subject property was still vacant as of August 12, 2007, the day prior to the instant hearing regarding the appeal. In conclusion, Zaley did not consider the subject's sale to be representative of an open market transaction.

The appraiser utilized six land sales to estimate the subject's fair market value. The appraiser testified he chose large

commercially zoned parcels to be developed for commercial uses located along major arterials. He testified he looks for comparable sales that do not have any undue motivation. The appraiser described "undue motivation" as pressure to close on a property before ample marketing time or a sale of a leased property in which a premium was paid. The comparables are located from six to 14 miles from the subject in the Will County communities of Shorewood, Romeoville, Lockport, Crest Hill, and Mokena, Illinois. Three comparables are described as interior lots while three comparables are described as corner lots with business or commercial zoning uses. The comparables range in size from 217,800 to 1,038,035 square feet of land area and sold from May 2003 to December 2004 for sale prices ranging from \$859,417 to \$4,568,194 or from \$3.89 to \$7.74 per square foot of land area. Comparable 1 had an intended use for retail development anchored by a Target Store and the remaining comparables were to be developed primarily with strip shopping centers.

After performing qualitative adjustments to the comparables for differences to the subject in location, size and frontage, the appraiser concluded the subject property has an estimated market value of \$6.50 per square foot of net usable land area or \$3,655,000, rounded. Based on this evidence, the appellant requested a reduction in the subject's assessment.

Under cross-examination the appraiser testified he did not inspect the comparables near the time of their sales to determine the extent of the surrounding commercial activity. The subject and comparables were inspected while the appraisal was being prepared. The appraiser acknowledged the subject access road has a connecting ingress and egress road from Bell Road. Zaley testified he considered the fact the subject is assessable from Glengary Drive, and the Home Depot site, which has access from Bell Road. The number of access points for the comparables were also discussed. Zaley testified he considered the subject's access points in the frontage and corner/interior lot adjustments, but did not adjust each comparable based on the number of access points. Zaley agreed he had no documents to support the contention Meijer would build a store to the south of Home Depot. Zaley also testified that it is well known the subject is being marketed within the development community. He did not know the asking price.

The appraiser testified the out-lots located between the subject and Bell Road were purchased by the appellant from Meijer for \$3,500,000 or \$32.00 per square foot of land area. This sale occurred the same date as the subject's \$4,000,000 sale price. Thus, both properties were purchased for a total of \$7,500,000 on the same day. Zaley testified the buyer (appellant) already had

a development plan for the asking resale prices for each individual out-lot. Zaley reiterated he did not analyze the \$3,500,000 sale price for the out-lots. However, Zaley testified the buyer informed him the sale prices were not allocated, but the buyer determined the value of the properties. The appraiser testified the wide spread of per square foot sale prices are reasonable because of the actual sale prices. The appraiser did not know when Meijer originally purchased the subject and out-lot parcels and he would not be surprised if they were both purchased by Meijer for \$6,500,000.

With respect to the comparable sales, Zaley testified sale 1 and 2 are located 10 and 14 miles from the subject, respectively, and they did not have any sort of grading, road improvements, curbs, or guttering like the subject, which is ready for development. Comparable 1 and 2 have all necessary utilities available. The appraiser agreed infrastructure adds value to property. Comparable sale 3 was ready for development at the time of sale, but may have had some deed restrictions regarding the future use of the site. Sale 3, which is located 6 miles and is less than half the size of the subject, has a one-acre storm water management system. No adjustment was made for the storm water management system although it encompassed 17% of the site. The subject has an off-site storm water management system. Sale 4 is located 11 miles from the subject and did not have infrastructure to be ready for development. Sale 5 is located approximately 7 miles from the subject. However, there was some debate as to the amount, if any, of infrastructure that had been installed.

Zaley testified he could not find any comparable land sales within six miles of the subject that did not have any undue motivation or discrepancies in the sales data. Zaley was aware of the Home Depot sale, but opined it was not comparable because it was subject to a double escrow. He explained this property sold twice on the same day. The intermediary buyer sold the property to Home Depot for a substantially higher price than its first sale price that day. Again, Zaley thought there was undue motivation involved in this sale and the transaction appeared to be a "flip."

Under redirect-examination, Zaley testified the subject's sale was not an open market transaction because it was an "up-leg" of a 1031 exchange in which the buyer was under constraints to close on the property. No explanation of the term "up-leg" was provided. Zaley considered the subject to be a corner lot due to its access points.

Under examination by the Hearing Office, Zaley testified the six month requirement in a 1031 exchange in not enough time to negotiate a sale price. At the time of sale, there was no

listing price for the subject property; however, Zaley testified it was well known within the development community the subject property was for sale. Zaley agreed 1031 exchanges are arm's-length transactions, although the buyer is under some time constraints. (Page 63 of transcript). Zaley did consider the subject's access road an amenity, although he deducted this portion from the overall amount of usable area. Zaley agreed the subject has good visibility.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject parcels' assessments totaling \$1,828,915 was disclosed. The assessments reflect an estimated market value of \$5,500,496 or \$9.36 per square foot of land area using Will County's 2005 three-year median level of assessments of 33.25%.

In support of the subject's assessment, the board of review submitted valuation evidence prepared by the township assessor. However, the township assessor was not at the hearing for direct testimony or be cross-examined regarding the evidence. In addition, the board of review's representative chose not give a presentation regarding the evidence prepared on behalf of the board of review, but deferred to the evidence offered by the intervenor.

The intervenor, Homer Community Consolidated School District 33-C, submitted an appraisal prepared by Timothy Sullivan, who was called as an expert valuation witness. Sullivan is a state licensed appraiser and holds the MIA and SRA designations. Sullivan was accepted as an expert valuation witness to provide opinion testimony before the Board.

Using the sales comparison approach to value, Sullivan estimated a fair market value for the subject property of \$5,435,000 or \$9.25 per square foot of land area as of January 1, 2005. The appraisal was marked as Intervenor's Exhibit 1.

The appraiser recognized the subject's sale price of \$4,000,000 in August 2004. However, the appraiser testified the adjoining 107,635 square feet that is comprised of the three out-lots sold on the same day for \$3,500,000 or \$32.52 per square foot of land area. Sullivan believed the sale prices were allocations, so the total sale price was \$7,500,000. He also noted the subject and adjoining out-lots were purchased in 2003 for \$6,500,000 or \$9.35 per square foot of land area.

The appraiser identified five land sales to estimate the subject's fair market value. Three comparables are located in Homer Glenn like the subject and are adjacent to three-quarters of a mile from the subject. Two comparables are located 6 and 10 miles from the subject in the Will County communities of Lockport

and Romeoville. The comparables range in size from 118,304 to 473,454 square feet of land area and sold from June 2002 to August 2004 for sale prices ranging from \$1,450,000 to \$4,700,000 or from \$9.42 to \$12.26 per square foot of land area.

The appraiser gave most attention to comparable 1, which was located adjacent to the subject. The property contains 473,454 square feet of land area and sold in May 2003 for \$4,524,751 or \$9.56 per square foot of land area. Like the subject it has off-site storm water management and is improved with access roads. It was subsequently improved with the previously mentioned Home Depot. Comparable sale 2 is located one-quarter of a mile from the subject and was purchased for the construction of a grocery store. However, it is considerably smaller than the subject. It has off-site storm water management. Comparable sale 3 is a dual corner site with off-site storm water management. It is located three-quarters of a mile from the subject and was subdivided into five commercial lots with varying business uses after the sale. Comparable sale 4 is located 11 miles from the subject in Romeoville, Illinois. The property is adjacent to a Jewel food store and included a number of parcels that front Weber Road. It also has off-site storm water management. Comparable sale 5 is located 6 miles from the subject in Lockport, Illinois. The property is described as an interior lot in an emerging commercial district several hundred feet from a main intersection that is anchored by Jewel food store. It also has off-site storm water management.

After performing qualitative adjustments to the comparables for differences to the subject in market condition, location, size, configuration, and setting, the appraiser concluded the subject property has an estimated market value of \$9.25 per square foot of land area or \$5,435,000, rounded. Based on this evidence, the intervenor requested confirmation of the subject's assessed valuation.

Under cross-examination, Sullivan testified the subject's \$4,000,000 sale price and adjoining out-lot sale price for \$3,500,000 sale was an allocation sale, although he did even attempt verify this opinion with the parties involved in the transaction. Furthermore, Sullivan testified he did not analyze the 2003 sale price of \$6,500,000 for the subject and adjoining out-lots.

With respect to the comparable sales, Sullivan agreed he relied on the May 2003 sale price for \$4,524,751 or \$9.56 per square foot of land area for comparable 1. Sullivan testified there was another sale for comparable 1 at \$3,408,866 or \$7.20 pr square foot of land area in May 2003. Sullivan described the sales of comparable 1 a "double escrow" and testified the closings took

place simultaneously. Sullivan testified he unsuccessfully attempted to contact the parties of the transaction to establish how the two different sale prices were determined. The witness testified he is familiar with the term "flipping", where a property is acquired and immediately sold for a higher price. The appraiser testified sale 1 could have been an example of flipping. Sullivan did not adjust comparable 1 to account for the "double escrow" transaction. Sullivan did not know if flipping a property was legal or illegal, but he knows they are frowned upon. Given the aforementioned circumstances, Sullivan was still of the opinion sale 1 was most similar to the subject.

Sullivan testified the data regarding comparable sale 2 was sourced from recorded public documents, but the data was not verified with the parties involved in the transaction. He testified comparables sale 2 is a corner lot, which are typically more desirable. Comparables sale 3 was subdivided into five commercial lots sometime after its sale. Sullivan testified the land size for sale 3 was sourced from the online Sidwell Plat Map Book. He testified the 347,710 square feet of land size utilized is the net area because of the public roadways that have been constructed. He opined the five subdivided lots contained one or two acres.

Sullivan testified the location of land sale 4, which is located in Romeoville, would be comparable to the subject's location. However, the appraiser performed a negative adjustment to this comparable for its location. The appraiser testified comparable 4 is anchored by a Jewel food store that was present when the property was purchased. Jewel's parent company was the seller of comparable 4. The appraiser also opined a premium may have been paid for this lot. The appraiser did not know the buyer of comparable sale 4 had nine months to procure tenants before closing. Sullivan agreed sale 5 was an interior lot located across the street and several hundred feet from the Jewel food store.

Sullivan testified all the comparables received a negative adjustment for size because they are superior in that they were smaller lots.

Zaley was next called as a rebuttal witness. Zaley testified he reviewed the appraisal prepared on behalf of the intervenor. With regard to sale 3, counsel tendered the Appellant's Exhibit 2. This document indicates the size of comparable 3 is 435,600 square feet of land area rather than the 347,710 square feet of land area used by Sullivan. Using the size of 435,000 square feet, this sale reflects a value of \$7.81 per square foot of land area. Zaley also referred to another document that was not marked as an exhibit indicating there was another prior listing

for comparable 3 with 331,760 square feet of land area which he discovered when preparing the appellant's appraisal report.

With respect to sale 4, Zaley testified he contacted the grantee who indicated 80% of the property was pre-leased prior to any construction. Zaley opined the buyer could have paid a higher price because he knew of the impending income stream. Zaley testified the buyer indicated he could pay a higher price for the property due to the shorter development and construction period.

Under cross-examination, the two sales for the intervenor's comparable 2 were discussed. Zaley testified he did not use this property as a comparable because he could not confirm its actual size.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds a reduction in the assessment of the subject property is warranted.

The appellant argued the subject property is overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 183, 728 N.E.2d 1256 (2nd Dist. 2000). The Illinois Supreme Court defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428 (1970). The Board finds the evidence in the record supports a reduction in the subject's assessment.

The Property tax Appeal Board gave less weight to the evidence submitted by the board of review. Foremost, the preparer of the evidence was not at the hearing for direct testimony and cross-examination. Additionally, the board of review's representative chose not give a presentation regarding the evidence prepared on behalf of the board of review, but deferred to the evidence offered by the intervenor.

The Property Tax Appeal Board finds the appellant and intervenor offered appraisals with supporting testimony estimating the subject's fair market value to be \$3,655,000 and \$5,435,000 as of January 1, 2005. The subject's assessment reflects an estimated market value of \$5,500,496, which is not supported by either appraisers' value conclusion. However, the Property Tax Appeal Board gave diminished weight to the final value conclusions as estimated by both appraisers. The Board finds both appraisal



reports contain flaws which detract from their final value conclusions.

With respect to the appellant's appraisal report prepared by Zaley, the Property Tax Appeal Board finds four of the five sales utilized were either considerably smaller or larger in size when compared to the subject. In addition, all the suggested sales are located a considerable distance from the subject.

With respect to the intervenor's appraisal report prepared by Sullivan, the Property Tax Appeal Board finds comparable sale 1 to be an unreliable indicator of the subject's value. The Board finds although this property is similar in size and located in close proximity to the subject, it sold twice, simultaneously, for divergent prices of \$3,408,860 and \$4,524,751 or \$7.20 and \$9.56 per square foot of land area, respectively. Furthermore, the Board finds the appraiser indicated he unsuccessfully attempted to contact the parties of the transaction to establish how the two different sale prices were determined. He testified he is familiar with the term "flipping", where a property is acquired and immediately sold for a higher price and agreed sale 1 could have been an example of flipping. Sullivan did not know if flipping a property was legal or illegal, but he knows they are frowned upon. Given these circumstance and the unknown factors surrounding the terms of this comparable's transaction, the Property Tax Appeal Board finds the appraiser's consideration of this property to be unreliable and not a persuasive indicator of the subject's fair market value.

The Property Tax Appeal Board gave diminished weight to comparable sale 2 used in the Sullivan report due to its considerably smaller size when compared to the subject. Furthermore, the transaction occurred over two years prior to the subject's January 1, 2005, assessment date.

The Board finds comparable sale 3 to be an unreliable as used by the intervenor's appraiser for an indicator of the subject's value for multiple reasons. First, the record contains three different sizes for this parcel. The intervenor's appraiser used a lot size of 347,710 square feet reflecting a per square foot sale price of \$9.78 whereas the rebuttal testimony revealed this property contained 435,500 square feet of land area, which reflects a per square foot sale price of \$7.81. During rebuttal, Zaley indicted there was another sale listing for this suggested indicting a size of 331,760 square feet land area. However, no documentation was presented to support this purported land size. Again, the Board finds the testimony revealed Sullivan did not verify the data used with respect to this comparable's accurate size. Based on this record, the Board finds the best evidence regarding comparable sale 3 is the Appellant's Exhibit 2. This

un-refuted documentation indicates comparable 3 contains 435,600 square feet of land area and sold in February 2004 for \$3,400,000 or \$7.21 per square foot of land area. The Board finds this property is slightly smaller in size than the subject and is located in close proximity to the subject.

Finally, the Property Tax Appeal Board gave less weight to intervenor's comparables 4 and 5 due to their distant location from the subject. Further, both appraisers' testimony directly or directly implied the area in which these properties are located do not share the same general market conditions as the subject.

The Board finds the best evidence of the subject's fair market value is its actual sale price of \$4,000,000 or \$6.81 per square foot of land area that occurred on August 30, 2004 together with comparable sale 3 contained with the intervenor's appraisal. The un-refuted documentation indicates comparable 3 has 435,600 square feet of land area and sold in February 2004 for \$3,400,000 or \$7.21 per square foot of land area. The Board recognizes neither appraiser relied on the subject sale price for some reasoning that that were not fully justified or supported by adequate documentation or the testimony elicited at the hearing. For example, Zaley did not consider the subject's sale to be representative of an open market transaction just because it involved a 1031 exchange and he concluded the buyer had undue motivation with duress to negotiate the sale price and complete the transaction in a very fast time frame. Sullivan contends the subject's \$4,000,000 transaction was an allocated sale price along and the adjoining out-lots that sold simultaneously for \$3,500,000.

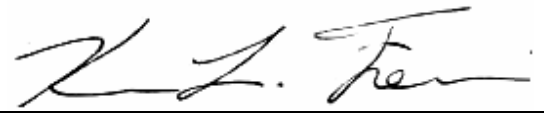
The Board finds neither appraiser verified their contentions with all parties related to the transaction nor was their any credible documentation to ascertain that the negotiated sale price was under undue duress and motivation or that the sale price(s) were allocated, which would suggest the subject's sale was not of an arm's-length nature. In fact, Zaley agreed 1031 exchanges are arm's-length transactions, although the buyer is under some time constraints. (Page 63 of transcript). Furthermore, this record contains a copy of the subject's Real Estate Transfer Declaration revealing the subject property was advertised for sale or sold using a real estate agent. The Illinois Supreme Court defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428, (1970). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be

practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1<sup>st</sup> Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc, 45 Ill.2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). The Board finds the evidence in this record establishes the subject's sale price reflects a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so, regardless of the 1031 exchange status. As previously mentioned, giving consideration to intervenor's comparable sale 3 and the subject's sale price, the Property Tax Appeal Board finds the subject property has a fair cash value of \$4,230,400.

Based on this analysis, the Board finds a reduction in the subject's assessment is warranted. Since fair market value has been established, the 2005 three-year median level of assessments for Will County of 33.25% shall apply.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.

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Chairman



Member



Member



Member



Member

DISSENTING: \_\_\_\_\_

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: January 25, 2008



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Clerk of the Property Tax Appeal Board

**IMPORTANT NOTICE**

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30

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days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.